

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

KENT W. RATHMANN, *et al.*

v.

CAUSE NO.: 3:20-cv-00033-KHJ-LGI

**MISSISSIPPI DEPARTMENT OF
CORRECTIONS, *et al.***

DEFENDANT

**MOTION TO COMPEL COMPLIANCE WITH SUBPOENA TO PRODUCE
DOCUMENTS, INFORMATION, OR OBJECTS**

COMES NOW the Plaintiff, Kent W. Rathmann, et al., and pursuant to Fed. R. Civ. Proc. 37 files this his *Motion to Compel* for the following reasons to-wit:

1. On April 12, 2021, this Court dismissed all named Defendants. However, this Court allowed for Plaintiff to conduct limited discovery to amend his Complaint to add the identities of Doe Defendants in their individual capacities. **[Doc. 28]**.
2. On May 10, 2021, this Court allowed Plaintiff to have 45 days to conduct limited discovery to determine the identity of Doe defendants. That deadline expired on Thursday, June 24, 2021. **[Doc. 32]**.
3. This Court allowed a deadline of July 8, 2021 for Plaintiff to file his Amended Complaint **[Doc 32]**.
4. Within the time allowed by the Court, in an effort to identify John Doe defendants, Plaintiff sent a subpoena to the Mississippi Department of Corrections via Certified Mail. It was received by MDOC on June 3, 2021, and an executed return was filed with this Court on June 7, 2021. **[Doc. 33]**

5. Thirty days passed and MDOC failed to respond to the subpoena. Plaintiff's counsel then contacted counsel for the previously dismissed Defendants, and in an effort to be helpful, he provided a telephone number of 601-359-5224 in an effort to follow up with MDOC as to the status of the subpoena. Despite multiple telephone calls and voicemails by the undersigned, all calls to MDOC have remained unreturned.
6. In addition to the subpoena to MDOC to determine the identity of John Doe Defendants, on June 16, 2021, Plaintiff tendered limited Interrogatories and Requests for Production of Documents to the counsel for the previously dismissed defendants [**Doc. 34 and Doc. 35.**]. There has been no response.
7. Counsel for previously dismissed Defendants takes the position that it no longer represents any Defendants because all of the named Defendants have been dismissed – which is technically true.
8. On July 8, 2021, this Court, via “text-only order”, extended Plaintiff's deadline until August 23, 2021 to file Plaintiff's Amended Complaint.
9. In a further effort to obtain compliance with the June 3, 2021 subpoena served on the Mississippi Department of Corrections, Plaintiff mailed a follow-up letter and email on July 21, 2021 to Janice Stancil requesting compliance with the subpoena [**Exhibit 1 – Letter to MDOC dated July 21, 2021**]
10. Plaintiffs received no response to their July 21, 2021 letter.
11. On August 16, 2021, Plaintiffs sent a second letter and email to the Subpoena Compliance Department of the Mississippi Department of Corrections as well as leaving voicemails with Janice Stancil and Kendra Michaels [**Exhibit 2 – Second**

Letter to MDOC dated August 16, 2021]. This letter was also sent via certified US mail. **[Exhibit 3 – Certified Letter Receipts].**

12. As of the time of this filing, Plaintiff has received no response to his letters, voicemails, or emails.
13. Plaintiff tendered limited discovery **[Doc. 34 & 35]** on June 17, 2021 in an effort to get the names of employees working during the relevant time in an effort to amend the case, however Plaintiffs have no counsel opposite which to answer them.
14. With the subpoena remaining unanswered, and the limited discovery remaining unanswered and without counsel opposite, Plaintiffs are unable to amend their Complaint to identify any John Doe Defendants.
15. Plaintiff asked and received a second extension of an additional 45 days to attempt to obtain a response to their subpoena to MDOC. **[Doc. 39]**
16. Plaintiff received no response to their subpoena from MDOC in that time.
17. Plaintiff now asks this Court, consistent with this Court's most recent Order, to compel compliance with the subpoena. It is clear that further court intervention is necessary. Plaintiff asks this Court to compel production of the following information from the Mississippi Department of Corrections consistent with the subpoena served in the matter:
 - A. *Any and All copies of all employee attendance logs and/or prison guards assigned to "Quick Bed A Building" for August 23, 2018.*
18. Plaintiff asks for a brief telephonic status conference with the Court to discuss these discovery issues.

19. This *Motion to Compel* is made in the interest of justice and not for the purposes for delay.

20. Pursuant to Fed. R. Civ. Proc. 37(a) the undersigned certifies he has in good faith conferred or attempted to confer with the Mississippi Department of Corrections in an effort to obtain this information without Court intervention.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests this Court compel the Mississippi Department of Corrections to respond to the Subpoena to Produce Documents, Information, or Objection filed in this matter.

RESPECTFULLY SUBMITTED, this the 18th day of October, 2021.

KENT RATHMANN, et al., PLAINTIFF

By: /s/ Michael S. Carr

Michael S. Carr, MSB No. 102138

Carlos E. Moore, MSB# 100685

Attorneys for Plaintiff

OF COUNSEL:

CARR LAW FIRM, PLLC
301 W. Sunflower Rd Suite D
P.O. Box 1749
Cleveland, MS, 38732
Phone: (662) 441-1529
Fax: 1 (662) 441-1530
Email: mcarr@carrlawpllc.com

OF COUNSEL:

Carlos E. Moore, Esq.
The Cochran Firm - MS Delta
306 Branscome Drive
Post Office Box 1487
Grenada, MS 38902-1487
662-227-9940- Office
662-227-9941- Facsimile
Email: cmoore@cochranfirm.com

CERTIFICATE OF SERVICE

I, Michael S. Carr, certify that on this day I filed this document via the ECF filing system of the United States District Court for the Southern District of Mississippi, which system sent notification of such filing to all counsel of record.

DATED this 18th day of October, 2021.

/s/ Michael S. Carr
Michael S. Carr